
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

**DEVELOPERS SURETY AND
INDEMNITY COMPANY,**

Plaintiff,

v.

**BOSWELL-OLSEN ENTERPRISES,
INC., ET AL.,**

Defendants.

**MEMORANDUM DECISION
AND ORDER**

Case No. 2:12CV367DAK

Judge Dale A. Kimball

On July 5, 2016, Plaintiff filed a Motion for Summary Judgment Against Clint Boswell. Defendant Boswell's time for opposing the motion passed, and the court issued an Order to Show Cause. In response, Boswell's counsel stated that he had failed to notify the court of two extensions of time he received from Plaintiff's counsel. The response further states that Boswell has not responded because he has been in consultation with bankruptcy counsel and intends to file bankruptcy. Despite two extensions, Boswell did not respond to Plaintiff's motion for summary judgment on the merits. Instead, he asked the court to defer any action until he filed the bankruptcy petition.

The court finds no persuasive reason for delaying its ruling. Boswell has known about the summary judgment in this case for months, and the issue is straightforward. On December 10, 2015, the court previously granted summary judgment against Clint Boswell based on Plaintiff's breach of the Indemnity Agreement claim.

Plaintiff present motion seeks summary judgment on Plaintiff's Seventh Cause of Action against Clint Boswell for fraud. The elements of fraud include: (1) a representation; (2) concerning a presently existing material fact; (3) which was false; (4) which the representor . . . knew to be false . . . , (5) for the purpose of inducing the other party to act upon it and (6) that the other party, acting reasonably and in ignorance of its falsity, (7) did in fact rely upon it (8) and was thereby induced to act (9) to that party's injury and damage." *Gold Standard, Inc. v. Getty Oli Co.*, 915 P.2d 1060, 1066-67 (Utah 1996).

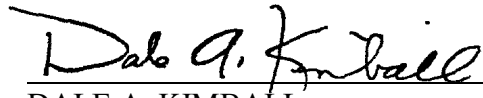
It is undisputed that Clint Boswell testified in his deposition that he signed his wife Kelly Boswell's name to the Indemnity Agreement. Plaintiff incurred losses on a bond it issued in reliance on the Indemnity Agreement. Kelly Boswell has refused to indemnify Plaintiff on the grounds that she did not execute the Indemnity Agreement. Plaintiff has suffered damages as a result of Defendant Clint Boswell's fraud in the amount of \$672,493.45. For these reasons, the court grants Plaintiff's motion for summary judgment against Clint Boswell on Plaintiff's Seventh Cause of Action for fraud.

Because this Memorandum Decision and Order resolves all claims between Plaintiff and Defendant Clint Boswell, the Clerk of Court shall enter final judgment, pursuant to FRCP 54(b), in favor of Plaintiff and against Defendant Clint Boswell in the amount of \$672,493.45, together with prejudgment and post-judgment interest.¹ The case, however, remains open as to Plaintiff's remaining negligence claim against Shane Lamb, and Shane Lamb's Crossclaim against Clint Boswell.

¹ The court issued Final Judgment, pursuant to FRCP 54(b), in favor of Plaintiff and against Defendant Mark H. Olsen on May 26, 2016.

DATED this 7th day of September, 2016.

BY THE COURT:



DALE A. KIMBALL
United States District Judge